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COMPULSORY ARBITRATION IN THE UNITED STATES

By Cornelius J. Doyle, Esq.,
Greenfield, Ill.

In this age of organization, with gigantic combinations of capital on one hand and powerful associations of labor on the other, the attainment of industrial peace is an ideal deserving and commanding the best thought of the time. The study of industrial problems is being forced more and more on statesmen and educators, leaders of public thought and molders of public opinion. At the outset let me say, that in my opinion, there is no royal road to industrial peace, unless we discover a method to change human nature. In spite of any laws which we may enact, or any machinery we may devise to aid in the settlement of industrial disputes, we still shall have some strikes. That perhaps is well, for while we may deplore strikes and bitter conflicts between employer and employees, the absolute prohibition of such conflicts would, in my judgment, create a condition of serfdom and oppression more dangerous to society than our present industrial disturbances.

Efforts to deal with these industrial conflicts by legislation began upwards of a century ago. The original attempts were primitive in character, suited to conditions existing at the time, but they embodied some of the ideas in effect to-day and aimed to protect the worker from economic injustice. As labor organizations grew in strength and influence, multiplying the number of strikes and lockouts, so did the machinery for dealing with them develop, until to-day we have arbitration and conciliation laws in almost every country and in almost every state in the United States. These laws differ in scope and vary in degree of effectiveness, but all aim at the same goal, the harmonizing of the interests of employers and employees, so that the third party, known as the public, may be injured or inconvenienced as little as possible.

The particular law with which I have chiefly to deal here is the law of "Compulsory Arbitration." I shall endeavor to point out some of the advantages and disadvantages of compulsory arbitra-

tion and, so far as I am able, show whether it would be effective in preventing strikes and lockouts in the United States.

The first compulsory arbitration law was enacted in New Zealand in 1891, following a disastrous series of strikes which paralyzed the industries of that country. It was enacted on the theory that where the public interests are affected, neither an employer nor an employee is absolutely a free agent and that personal liberty ceases to be liberty when it interferes with the general well-being of society. In other words, the Parliament of New Zealand decided that the rights of the masses were paramount to the rights of any particular classes. When the law was passed it was hailed by idealists as the acme of industrial legislation. The "country without strikes" became almost a household word and the eyes of other countries turned toward the antipodes to watch the results of its experiment in dealing with its industrial problem. Other countries of Australasia took up the consideration of the problem and later compulsory arbitration laws patterned after the New Zealand law were enacted in New South Wales and in West Australia.

The success of the experiment of Australasia with its compulsory arbitration laws is open to conflicting opinions. Advocates of the law assert that the country has greatly prospered, which undoubtedly is true. The fact should not be overlooked, however, that since the passage of the laws in the countries affected, there has been a steady upward tendency in prices, and wages and strikes are uncommon on a rising market in any country, for the reason that employers are more ready to accede to demands. The real test of arbitration laws comes on a falling market when the employer wants to reduce wages, and I have rarely known a case where organized workmen will accept a reduction in wages without a fight, no matter what laws may be on the statute books.

If we look at compulsory arbitration laws as a means of preventing strikes and lockouts by absolutely declaring them illegal, we are bound to admit that the Australasian laws have been failures. They have not prevented strikes or lockouts absolutely, though they may have reduced them in number and extent. Numerous strikes have taken place in those countries since the adoption of the laws, some of which have been quite serious in effect, while the enforcement of the penalties provided in the laws has been found difficult if not impossible.

Recent newspaper dispatches from Sydney, New South Wales, state that business is so demoralized by reason of a strike of coal miners that a bill has been passed rendering labor leaders or employers who instigate or aid a strike or lockout, liable to a year's imprisonment. Reduced to its final analysis that must be the ultimate end of any compulsory arbitration law—work on the conditions prescribed or go to jail. It is doubtful if even the drastic threat of a jail sentence will compel a workman to continue at work under conditions which he regards as intolerable and it is equally doubtful if any threatened punishment will compel an employer to operate his business unless he can see a reasonable profit in so doing. An award which increases the labor cost beyond what the industry can successfully carry is confiscatory and an employer can not accept it and remain in business. This was shown in Australasia in the case of the shoe manufacturers, who closed down their establishments and declared they would import shoes from Europe and America, rather than attempt to operate their factories and pay the wages set by the Arbitration Court.

In spite of its experiences, however, Australasia does not want to repeal its arbitration laws. The New South Wales law was passed in 1901 for a period of seven years and in 1908 it was reenacted at the end of the experimental period. New Zealand endeavored to strengthen its original law by providing machinery for the better enforcement of awards, so it would appear that the idea of compulsory arbitration has met with favor in the eyes of a majority of the people in the land of its origin.

There is one point in consideration with the Australasian laws which I regard as rather significant. The last report for Western Australia for the year ending June 30, 1909, shows that joint trade agreements are taking the place of awards of arbitration courts. These contracts are termed "Industrial Agreements" and are enforceable by the Court of Arbitration. They are entered into voluntarily by employers and employees as are joint trade agreements in this country. Mr. Edgar T. Owen, Registrar of Friendly Societies, in his report dated August 14, 1909, says: "It will be observed that the unions which have made industrial agreements in lieu of awards of the court for settlement of their disputes contain 7,524 out of a total membership of all unions of 15,596."

The point I desire to emphasize is that in West Australia, as

shown by the report referred to, workingmen and employers are making their own agreements instead of having the Arbitration Court make them. The same report shows that while there were 168 disputes referred to the Arbitration Court from 1901 to 1904, there were three disputes referred to it in 1907 and twelve disputes in 1908. That certainly does not seem to argue for the popularity of the Arbitration Court, and taken in conjunction with the increase in the number of industrial agreements, indicates clearly to my mind that employers and workingmen in West Australia are turning to the joint trade agreement as the better method of adjusting differences.

As has been stated, the New Zealand law was enacted at a time when the public was exasperated as the result of a series of prolonged strikes. It was not favored by either employers or employees. For a time neither side took advantage of the law, until a union which was worsted in a strike, decided to register so that it might have an additional weapon in the event of another dispute. When the next dispute did arise, the employers ignored the court and an award was returned against them. The award was enforced by fines and eventually employers began to realize that the new law was not to be trifled with or ignored.

In New Zealand trade unions are made the basis for compulsory arbitration. The workmen must belong to a duly registered union before they can appeal to the court. That presents rather an anomaly, compelling workmen to organize and then depriving them of the right to exercise the function of organization by quitting work collectively if they are dissatisfied with their conditions. I have dealt at some length with the Australasian laws because a study of compulsory arbitration laws in operation is of infinitely more value than mere theorizing on how such laws might operate if tried in some other country. Let us see how such laws would apply in the United States.

In the first place, the successful operation of a law depends on the state of mind of the people in the country or locality where it operates. If there is a popular demand for a law it is easily enforceable and probably will accomplish the ends aimed at. If there is no such popular demand, or if popular sentiment is against a law, it is very apt to become a dead letter and its enforcement an impossibility. Aside from the question of whether compulsory arbitration

laws would not be in violation of the Constitution of the United States, in that their enforcement would entail involuntary servitude, there is no demand for such laws in our own country. The conditions in the United States and Australasia are as different as the countries are widely separated. In Australasia the tendency is toward state control in everything. Individual rights are regarded as being entirely subservient to the rights of the people as a whole. In the United States the opposite is true. Here we are extremely jealous of individual rights and liberties and we resent governmental interference with what we regard as our private affairs. It is not the question whether we are right in the position or not, it is the fact that we must reckon with.

The experience of Australasia with its compulsory arbitration laws has tended to strengthen the opposition to such laws, not only in the United States, but in Great Britain and other countries. In Great Britain the question of compulsory arbitration is placed on the agenda of the Trades Union Congress as regularly as the so-called "Socialist Resolutions" in the convention of our own American Federation of Labor, and the majority by which compulsory arbitration is voted down each year shows that the idea is losing rather than gaining ground. In Great Britain it has been advocated by a radical wing of Socialists, but in the United States even the Socialists are opposed to it.

To the average American the idea of compulsory arbitration, which under certain conditions means involuntary servitude, is decidedly repugnant to his concept of liberty. Our form of government, which vests in the separate states the right to legislate in all matters within their respective borders, would make the working of compulsory arbitration laws difficult if not impossible. The federal government might pass a law applying to a few public utility corporations, such as railroads and telegraph companies, which are engaged in interstate commerce, but could not legislate for the great mass of employers and employees. Experience shows that comparatively few of our strikes are directed against public utility corporations, therefore such laws, should they be constitutional and enforceable, would not prevent strikes except in a limited degree.

I have already referred to the importance of having public sentiment on the side of any law to make it effective, and nowhere

is the truth of this more observable than in the arbitration and conciliation laws on the statute books of a large number of our states. We have in Illinois a very good law dealing with industrial disputes. To the extent that the arbitration board can compel the attendance of witnesses and the production of books in a strike which inconveniences the public, it is compulsory and probably goes as far in that direction as it is advisable to go at the present time.

While the Illinois law has been the means of averting many strikes and of adjusting others, our activities under the law have been limited by reason of the fact that many times neither party to a dispute likes the idea of outside interference. The machinery is there, but in a majority of cases neither side will invoke its aid, and it is doubtful to my mind whether they could be forced to do so. They must be educated and led rather than driven.

The compulsory feature of the Illinois law is contained in the following clause:

> Whenever there shall exist a strike or lockout wherein, in the opinion of a majority of said board, the general public shall appear likely to suffer injury or inconvenience with respect to food, fuel or light, or the means of communication or transportation, or in any other respect, and neither party to such strike or lockout shall consent to submit the matter or matters in controversy to the State Board of Arbitration in conformity with this act, then the said board after having made due effort to effect a settlement thereof by conciliatory means and such effort having failed, may proceed of its own motion to make an investigation of all facts bearing upon such strike or lockout, and make public its findings, with such recommendations to the parties involved as in its judgment will contribute to a fair and equitable settlement of the differences which constitute the cause of the strike or lockout; and in the prosecution of such inquiry the board shall have the power to issue subpœnas and compel attendance and testimony of witnesses as in other cases.

The section of the law quoted has been in effect since 1901, but has not been put to a test. It is based on the theory that public opinion is the final arbiter in disputes of a public or quasi-public character, and I believe that the theory is correct. Few strikes of a character that would inconvenience the public in the meaning of the law have occurred in Illinois since 1901. In 1903 we had a strike of street car employees in Chicago that doubtless came under the provisions of the law and the members of the board made efforts to

settle the strike, but without success, as the company refused to co-operate. The board took the question of an investigation under consideration, but as the city council and other agencies were at work trying to bring about a settlement, which was the question of first importance, the investigation was not started because it might have tended to hinder a settlement and certainly could not have been completed in time to be of much use. The strike lasted about two weeks. In a coal strike in 1906 the board offered its services in a mediatory capacity, but the dispute was of such a nature that no agency would have been effective, as both sides simply agreed to fight it out and get together when they had enough of it. The strike had been anticipated for months and there was a sufficient supply of coal on hand to insure against any inconvenience to the public. In fact, neither the coal operators nor the miners regarded the dispute as a strike or a lockout, but preferred to term it a "suspension."

While I have said that the Illinois law goes as far in the direction of compulsory investigation as may appear advisable, I believe it could be improved upon in one particular. Instead of providing for an investigation after a strike or lockout has occurred and after the public has been injured, the investigation should be after such strike or lockout has been threatened and there appears no possibility of its being averted without some outside intervention.

The aim of all state boards of conciliation and arbitration is to prevent rather than to settle strikes, and though I am convinced that compulsory arbitration is neither practicable nor advisable in the United States under existing conditions, I believe that compulsory investigation would be desirable in all disputes between public utility corporations and their employees.

It is the hasty, ill-advised strike that causes most of our troubles and at least half of them could be averted if both sides were required to submit to an impartial investigation and give full publicity as to the merits of the controversy. After such investigation, the public which is discriminating in such matters where the facts are known would soon end a strike were one to take place. It is doubtful if any corporation or labor union would have the hardihood to fly in the face of an educated, enlightened public opinion and for that reason I believe publicity is the strongest weapon that can be used for the maintenance of industrial peace.

The experience of Canada with its "Industrial Disputes Investigation Act," of 1907, has been most gratifying. Industrial conditions in Canada do not differ materially from those in the United States. The organized workers in both countries belong to the same international unions. The Canadian act has not prevented strikes in every instance. It was not expected that it would, but in the first year of its operation thirty-two disputes out of thirty-five referred under the law, were satisfactorily adjusted. The number of men involved in the controversies referred to was between 25,000 and 30,000. The actual number of boards constituted under the law during the first year of its operation was twenty. That record proves that the Canadian law is well adapted to present-day conditions. The Canadian law was enacted on the recommendation of the deputy minister of labor following a prolonged strike of coal miners which caused a coal famine throughout Saskatchewan. Briefly it prohibits any strike or lockout in any industry affecting a public utility until an investigation has been made, and allows a period of thirty days in which to make such investigation.

After the investigation has been completed by an official board created for that particular case and the result of its findings made public, the employer or the union is free to engage in a strike or lockout if desired. Of course the board does everything possible to effect an amicable settlement as well as conduct an investigation and its official report is in the nature of recommendations to one or the other of the parties, or to both. Generally speaking, those recommendations have been accepted without recourse to a strike. Where they have not been and a strike has been called, the same recommendations have sometimes been accepted later to settle the strike. Though the Canadian law does not in every case prevent strikes, it furnishes an easy and sensible method for adjusting industrial disputes if either one side or the other has an honest desire to settle. If they have not there is no law, compulsory or otherwise, that will prevent strikes.

It has been my experience, however, that in a large majority of cases both sides are anxious to avert strikes, if a middle ground can be found and neither one required to forego any principle. In matters pertaining to hours and wages, usually some compromise is possible; in cases where a principle is at stake it is more difficult. Even then, though it is impossible to arbitrate or compromise on a

question regarded by either side as a fundamental principle, it frequently is possible by means of intelligent discussion and argument to present a situation in a very different light from that in which it may have been viewed by one side or the other. For that reason the Canadian law of compulsory investigation previous to a declaration of war in industries affecting public utilities, seems to me an admirable one which possesses advantages not possessed by the compulsory arbitration laws of Australasia. No edict of a court will convince either a workingman or an employer that he is wrong and the court is right. If he is open to reason and conviction an intelligent argument may convince him that his position is untenable and he will acquiesce cheerfully, where in the other case he might submit rather than go to jail, but would still be dissatisfied.

Another point that I have observed in my exeprience is that arbitration awards seldom are satisfactory to either side in an industrial dispute. If both sides agree to accept such award, they usually do so, but it leaves a bad taste in the mouth of one or the other. On the other hand, agreements entered into voluntarily by both sides usually prove satisfactory. Each side has had a hand in making the contract and accepts it as the best bargain obtainable under the circumstances.

If it is true that awards of voluntary arbitration boards are not usually satisfactory, it would be even more so with compulsory arbitration. If the aim be to establish the greatest amount of harmony between employer and employee, so that the number of strikes and lockouts may be reduced to a minimum, I am convinced that to make compulsory arbitration successful each disputant must have perfect confidence in the arbitration court and an abiding faith that the award will be rendered in a spirit of justice and perfect fairness. That confidence, in my opinion, cannot be inspired where there is compulsion. As we understand arbitration it is the antithesis of compulsion.

In conclusion let me say that, though we realize that in many strikes the innocent third party is made to suffer, I am convinced from a study of the facts that it is better to "bear the ills we have than fly to others we know not of" in the shape of compulsory arbitration.